

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission)	
On Its Own Motion)	
)	
-vs-)	Docket No. 15-0608
)	
The Peoples Gas Light and Coke Company,)	
Integritys Energy Group, Inc.,)	
And Wisconsin Energy Corporation:)	
Investigation concerning possible violation of)	
Section 5-202.1 of the Public Utilities Act)	

**VERIFIED RESPONSE OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION
TO THE ATTORNEY GENERAL OF ILLINOIS AND CITIZENS UTILITY BOARD’S
JOINT VERIFIED PETITION FOR INTERLOCUTORY REVIEW OF THE ALJ’S
RULING DENYING THEIR JOINT VERIFIED EMERGENCY MOTION FOR THE
ISSUANCE OF SUBPOENAS AND EXTENSION OF THE SCHEDULE**

NOW COMES the Staff of the Illinois Commerce Commission (Staff), by and through its undersigned counsel, pursuant to 83 Ill. Adm. Code 200.520, and in response to the Attorney General of Illinois (“AG”) and Citizens Utility Board’s (collectively “AG / CUB”) Joint Verified Petition for Interlocutory Review of the ALJ’s Ruling Denying their Joint Verified Emergency Motion for the Issuance of Subpoenas and Extension of the Schedule (“Petition”), respectfully states AG / CUB’s Petition should be denied in its entirety.

In support thereof, Staff states as follows:

1. On November 18, 2015, the Commission issued its Order initiating the proceeding. (*See, generally, Initiating Order.*)
2. In its Initiating Order, the Commission directed that:

[P]ursuant to Section 5-202.1 and 10-101 of the Public Utilities Act a proceeding of a specified scope and duration [is] initiated to determine whether Peoples Gas, Integrys or WEC or any employee, agent or representative thereof knowingly misled or withheld material information from the Commission at its May 20, 2015 Open Meeting.

Id. at 2-3 (emphasis added).

3. The Commission further directed that “the Administrative Law Judge assigned shall submit a Proposed Order to the Commission within 180 days of entry of an order initiating an investigation.” Id. at 3.

4. At the November 18, 2015 meeting, prior to voting on the proposal to issue the Initiating Order, several Commissioners made statements regarding the matter. Commissioner Edwards stated that:

I would like to briefly add though that given the history and the ongoing nature of this issue, time is of the essence and I'm confident that the investigation will lead to a fair and expeditious resolution of this important matter. I just want to stress that I do hope we can move forward quickly, efficiently, and to use as little of the resources of our consumers as possible.

(Tr. 15-16, November 18, 2015 (emphasis added).)

5. Similarly, Commissioner McCabe stated that: “Staff’s report and the proposed Order calls for information to be provided within 14 days and the inquiry to be completed within 180 days.” Id. at 16.

6. On December 9, 2015, a hearing was convened in this proceeding, and an agreed schedule consistent with the Commission’s directive to complete the inquiry within 180 days was set. (Tr. 6-7, December 9, 2015.) At that proceeding, the AG first indicated that it might seek to have deposition subpoenas issued. Id. at 8-9.

7. At the request of the AG, a further hearing was scheduled for January 5, 2016 for the express purpose of revisiting the schedule after the parties had a chance to review additional materials produced by Peoples Gas. Id. at 10-11.

8. In the course of the January 5, 2016, hearing, an AG representative stated that it was “likely that [the AG would] filing a motion to request that the Commission issue [deposition] subpoenas[,] [a]nd that pleading ... will be coming within the next several days.” Id. at 19-20.

9. On January 26, 2016, the AG finally filed, jointly with the Citizens Utility Board (CUB), a Joint Verified Emergency Motion for the Issuance of Subpoenas and Extension of the Schedule (See, *generally*, Motion.) In their Motion, AG / CUB requested that the Administrative Law Judge (ALJ) issue subpoenas compelling the deposition of eight named persons, five of whom are no longer employed by Peoples Gas or Wisconsin Energy Corporation (“WEC” and collectively “Respondents”) in any capacity. Motion at ¶¶32-34. In concert with this request, AG / CUB requested an extension of the existing schedule. Id. at ¶¶35-40.

10. Commission procedural rules provide that “[f]ormal discovery by means such as depositions and subpoenas is discouraged unless less formal procedures have proved to be unsuccessful.” 83 Ill. Adm. Code 200.340. In recognition of this, AG / CUB asserted in their Motion that attempts to obtain information through data requests – the usual method for conducting discovery in Commission proceedings – had been “insufficient.” Motion at ¶¶22, 27.

11. AG / CUB alleged in their Motion that Respondents’ responses to data requests were based on documents rather than interviews with purportedly

knowledgeable persons; were speculative; and in many cases were submitted subject to the *caveat* that such response is made “on information and belief.” Motion at ¶¶23-25, 29. AG/CUB asserted that Respondents attempted to “delay and obfuscate[e]” discovery in this proceeding. Id. at ¶27.

12. The AG conceded that it had not made, or even perfected its right to make, a Motion to Compel more complete responses to the data request responses it considered inadequate. Id. at ¶14.

13. On February 2, 2016, the ALJ issued a Ruling denying the Motion, stating that:

[A]fter careful consideration of the parties positions in this matter, the People of the State of Illinois and the Citizens Utility Board’s Joint Verified Emergency Motion for the Issuance of Subpoenas and Extension of the Schedule is denied. The Initiating Order of the Commission made it clear the information the Respondent was to provide in this docket. The Administrative Law Judge does not have the authority to change a Commission imposed deadline and at this point in the proceedings, there is not enough time for the delays that may be caused by the scheduling and enforcement of subpoenas.

ALJ Ruling at 1

14. On February 11, 2015, the AG and CUB sought, by Petition, interlocutory review of the ALJ’s Ruling.

15. In their Petition, the AG and CUB argue that the ALJ Ruling did not engage the question of whether less formal discovery methods had proven to be unsuccessful. Petition at 2. They further allege that less formal discovery methods had indeed proven to be unsuccessful at the time they brought their Motion. Id. at 5-7.

16. The AG and CUB assert that “[t]he ALJ’s Ruling states that the ALJ does not have the authority to change the Commission-imposed deadline in the case, and that

scheduling subpoenas is simply not possible within the timeframe given in the Commission's Initiating Order." Id. at 7. Apparently recognizing that this is perfectly true, AG / CUB urge the Commission to "now make clear that it prioritizes thorough answers to the concerns expressed in the Staff Report and Initiating Order over strict adherence to the 180-day timeline." Id. They contend that "[i]ssuance of subpoenas is the only means the [AG] and CUB – and the Commission – have to get the full truth. [fn]" Id. at 6.

17. The AG / CUB Petition should be denied.

18. First, the AG and CUB did not and have not demonstrated that less formal discovery methods have failed. As the Staff demonstrated in its Response to the AG / CUB Motion, AG / CUB have not demonstrated they have pursued and exhausted less formal discovery procedures before seeking the relatively drastic step of issuance of deposition subpoenas. See Staff Response, ¶¶14-15. Indeed, weeks after filing their Motion, they still do not allege that they have consulted with Respondents pursuant to Section 200.350, a condition precedent to a motion to compel answers to their data requests that they are likely to find more adequate than the ones they have received to date. See, generally, Petition.

19. Second, discovery responses received to date were apparently quite adequate to permit AG / CUB to file a 39-page, 131-paragraph pleading in which they concluded that violation by Respondents of Section 5-202.1 was conclusively established. See, generally, AG / CUB Initial Pleading. Accordingly, it is difficult to see how the informal discovery process can be said to have failed. Even if it could, however, the alleged failure appears not to have materially prejudiced AG / CUB. Accordingly, their case for

abandonment of less formal discovery and issuance of deposition subpoenas was, and remains, far short of convincing.

20. Third, the AG and CUB appear to repose confidence in discovery received to date sufficient to allow a CUB representative to appear on television and offer the opinion that Respondents deliberately withheld material information from the Commission. See <http://chicagotonight.wttw.com/2016/02/15/peoples-gas-cub-discuss-gas-main-replacement-program>.

21. As the ALJ noted, the Motion was also untimely. The AG / CUB did not file their Motion “within the next several days” after the January 5, 2016 status hearing, as the AG led the parties to understand the AG would do. (Tr. 19, 20, January 5, 2016.) Instead, they waited over three weeks, effectively foreclosing any possibility that their Motion could be granted.

22. In summary, AG / CUB did not make a case that normal discovery procedures were not and will not be sufficient, nor did they demonstrate that depositions are necessary. Accordingly, the ALJ properly denied their Motion. Likewise, their Motion was brought in an untimely manner which prevented it from being granted.

23. For all the foregoing reasons, AG / CUB’s Petition should be denied in its entirety.

24. If, however, the Commission is inclined to grant the Petition to any extent, the Staff urges that it be to a limited extent. More specifically, of the eight persons who AG / CUB wish to depose, three - and only three – spoke on behalf of Respondents at the Commission’s May 20, 2015 meeting. Those persons are John Kleczynski, James Schott and Charles Schrock. Mr. Kleczynski, Mr. Schott and Mr. Schrock are, accordingly,

the only persons who could conceivably have “knowingly misrepresent[ed] facts or... withh[eld] information” from the Commission within the meaning of Section 5-202.1 of the Public Utilities Act, 220 ILCS 5/5-202.1. Accordingly, they are the only persons whose depositions could possibly yield any information relevant to this inquiry. If the Commission is inclined to allow depositions to be taken, it should make clear that the only depositions which may be taken are those of Messrs. Kleczynski, Schott and Schrock. Allowing depositions of other individuals would only cause the proceeding to lag significantly and unnecessarily, to the detriment of the prompt and certain resolution of the issues in this docket.

25. Further, and perhaps equally important, the Commission made it clear there is a need for prompt resolution of this matter. Accordingly, the Commission should direct that the depositions be completed by a date certain, or not taken at all. In its Reply Brief in support of its Motion, AG / CUB suggested “extend[ing] the entire schedule by about six weeks” to allow time for the eight depositions it sought to take. Reply to Motion, 9. It therefore is reasonable to assume that the AG and CUB will be able to depose the three deponents within ninety days of the date of issuance of subpoenas. Accordingly, the Commission should order that any depositions it allows must be taken within ninety days of the issuance of subpoenas. It should further order that the deadline for a proposed order in this proceeding be extended by ninety days as well.

WHEREFORE, the Staff of the Illinois Commerce Commission respectfully requests the Commission deny the Attorney General and Citizens Utility Board's Joint Verified Petition for Interlocutory Review.

Respectfully submitted,

/s/_____

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